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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/769,973

02/02/2004

John Wootton

2/1219US

8988

22822

7590

08/31/2006

LEWIS, RICE & FINGERSH, LC

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SUITE 2000

ST LOUIS, MO 63102

EXAMINER

PHAM, MINH CHAU THI

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,973

Applicant(s)

WOOTTON ET AL.

Examiner

Minh-Chau T. Pham

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 7-13 and 15-18 are again rejected under 35 U.S.C. 102(b) as being anticipated by either Wachter (3,775,949) or Grandjean et al (5,900,043).

Wachter teaches a filtration unit which supplies a room with air purified from poisonous substances (see Abstract) comprising a first air flow path (16) wherein air passes through the filtration unit without passing through a filter, a second air flow path (8) wherein air passes through the filtration unit through a filter (5), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 1, lines 52-59). Wachter further teaches a rapid closure valve (13) arranged in the first and second flow paths and controlled by a controller, and the valve can be switched from one position to another to facilitate air flow to either path, as desired (see 13 in Fig. 1, col. 1, lines 34-38 and lines 52-59, col. 2, lines 26-37).

Grandjean et al teach a filtration unit comprising a first air flow path (see air arrow flowing through pipe 22) wherein air passes through the filtration unit without passing through a filter, a second air flow path (see air arrow flowing through pipes 4 & 5) wherein air passes through the filtration unit through a filter (3), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 3, line 62 through col. 4, line 2, col. 4, lines 27-29). Grandjean et al further teach a

switching valve (25) arranged in the first and second flow paths and controlled by a controller, and the valve (25) can be switched from one position to another to facilitate air flow to either path, as desired (see 25 in Fig. 1, col. 3, line 3 through col. 4, line 2, col. 4, lines 10-20 and lines 27-29)

Claim 8 calls for the second air flow path and the third air flow path being symmetrical. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the second and third air flow paths being symmetrical since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

The phrase “a nuclear, biological, and chemical (NBC) filtration unit for use with a portable environmental control unit (ECU)” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951). In addition, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Wachter (3,775,949) or Grandjean et al (5,900,043).

Wachter discloses a filtration unit which supplies a room with air purified from poisonous substances (see Abstract) comprising a first air flow path (16) wherein air passes through the filtration unit without passing through a filter, a second air flow path (8) wherein air passes through the filtration unit through a filter (5), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 1, lines 52-59).). Wachter further discloses a rapid closure valve (13) arranged in the first and second flow paths and controlled by a controller, and the valve can be switched from one position to another to facilitate air flow to either path, as desired (see 13 in Fig. 1, col. 1, lines 34-38 and lines 52-59, col. 2, lines 26-37). Grandjean et al disclose a filtration unit comprising a first air flow path (see air arrow flowing through pipe 22) wherein air passes through the filtration unit without passing through a filter, a second air flow path (see air arrow flowing through pipes 4 & 5) wherein air passes through the filtration unit through a filter (3), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 3, line 62 through col. 4, line 2, col. 4, lines 27-29). Grandjean et al further disclose a switching valve (25) arranged in the first and second flow paths and controlled by a controller, and the valve (25) can be switched from one position to another to facilitate air flow to either path, as desired (see 25 in Fig. 1, col. 3, line 3 through col. 4, line 2, col. 4, lines 10-20

and lines 27-29). Claims 21-23 differ from the disclosure of either Wachter or Grandjean et al in that the claims call for a second air flow path with a filtration unit. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a second flow path having a filtration unit in conjunction with a first flow path having a filtration unit, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. See St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Claims 5 and 6 are again rejected under 35 U.S.C. 103(a) as being unpatentable over either Wachter (3,775,949) or Grandjean et al (5,900,043), in view of either Rick et al (5,925,172).

Claims 5 and 6 call for the command of the controller being sent via wireless technology. Rick et al disclose a control system can be a wireless device (col. 6, lines 36-38). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a control system being wireless as taught by either Rick et al in the apparatus of either Wachter or Grandjean et al since the wireless device would be a convenience to the user to operate the system without lots of wiring attached.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Wachter (3,775,949) or Grandjean et al (5,900,043), in view of the German Patent (DE 2312303 A).

Claim 14 calls the filter to be a carbon bed filter. The German reference discloses the filter can be a carbon filter bed (see Derwent abstract). It would have

been obvious to a person having ordinary skill in the art at the time the invention was made to provide a carbon bed filter in the apparatus of either Wachter or Grandjean et al since it is well known in the art that the carbon bed filter is an effective adsorbing medium for any gaseous radioactive materials.

Response to Amendment

Applicant's arguments filed on June 29, 2006 have been fully considered but they are not persuasive.

Applicant argues that none of the cited prior arts discloses a filtration unit with two separate flow paths one is filtered and one is unfiltered to an ECU and a filter being a NBC filter. The Examiner respectfully disagrees. As argued before, the phrase "a nuclear, biological, and chemical (NBC) filtration unit for use with a portable environmental control unit (ECU)" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951). In addition, it has been held that a recitation such as "NBC" filter with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

The Examiner respectfully points out that both references Wachter and Grandjean et al clearly teach: Wachter teaches a filtration unit which supplies a room

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with air purified from poisonous substances (see Abstract) comprising a first air flow path (16) wherein air passes through the filtration unit without passing through a filter, a second air flow path (8) wherein air passes through the filtration unit through a filter (5), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 1, lines 52-59). Grandjean et al teach a filtration unit comprising a first air flow path (see air arrow flowing through pipe 22) wherein air passes through the filtration unit without passing through a filter, a second air flow path (see air arrow flowing through pipes 4 & 5) wherein air passes through the filtration unit through a filter (3), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 3, line 62 through col. 4, line 2, col. 4, lines 27-29), as read on the broad language of the claims.

Applicant amends independent claim 1 to incorporate a limitation "a plurality of valves arranged in the first and second air flow paths and controlled by controller". Wachter clearly discloses a rapid closure valve (13) arranged in the first and second flow paths and controlled by a controller, and the valve can be switched from one position to another to facilitate air flow to either path (see 13 in Fig. 1, col. 1, lines 34-38 and lines 52-59, col. 2, lines 26-37), as claimed. Grandjean et al clearly disclose a switching valve (25) arranged in the first and second flow paths and controlled by a controller, and the valve (25) can be switched from one position to another to facilitate

air flow to either path (see 25 in Fig. 1, col. 3, line 3 through col. 4, line 2, col. 4, lines 10-20 and lines 27-29), as claimed.

Applicant newly adds claims 21-23 with a limitation "a second air flow path with a filtration unit". It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a second flow path having a filtration unit in conjunction with a first flow path having a filtration unit as taught by either Wachter or Grandjean et al, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. See St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Applicant's arguments with respect to claims 1-28 and 21-23 have been thoroughly considered but are moot in view of the rejections, as discussed above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Minh-Chau Pham
Patent Examiner
Art Unit: 1724
August 28, 2006